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1952

File No. O. Munis Dist / 52

Legal Department.

A **BRANCH**

Subject:— Opinions under the Bombay District Municipal Act, 1901

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File No. O. Munis Dist/52

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C O N T E N T S.

Legal Department File No. O. Mimmx & Munis Diss/ 52.

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EVY. 14/7.

Office of the R.L.A.

The question raised for the R.L.A.'s consideration is whether the authority vested with the power of hearing objections under section 65(3) of the Bombay District Municipal Act can increase the assessment against which an appeal is preferred if, as a result of his investigation, he is satisfied that the property has been under assessed and whether he can suo motu increase the valuation in respect of properties for which no appeals are received.

Section 63 of the Bombay District Municipal Act provides for the preparation of an assessment list and section 64 for publication of notice of assessment list. Under section 65(2) all objections to the valuation and assessment shall be made to the Municipality, before the time fixed in the notice, by application in writing stating the grounds on which the valuation and assessment are disputed, and all applications so made shall be registered in a book to be kept by the Municipality for the purpose Under sub-section (3) the authority to whom the objections are made shall, after allowing the applicant an opportunity of being heard in person or by agent,

(a) investigate and dispose of the objections,

(b) cause the result thereof to be noted in the book kept under sub-section (2), and

(c) cause any amendment necessary in accordance with such result to be made in the assessment list.

Under sub-section (4), when all objections under this section have been disposed of, and all amendments required by sub-section (3) have been made in the assessment list, the said list shall be

authenticated etc. Subsection (6) provides that subject:-

(a) to such alterations as may thereafter be made therein under the provisions of the next following section, and

(b) to the result of any appeal made under section 86.

the entries in the list so authenticated and deposited shall be accepted as conclusive evidence for the purposes of all municipal taxes, etc. Under section 66(1) the assessment list can be amended by inserting the name of any person whose name ought to have been inserted, or by inserting any property which ought to have been inserted, or by altering the valuation of or assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, after giving notice to any person interested in the alteration of a time, not less than one month from the date of service of such notice, at which the alteration is to be made. It is clear from these provisions that the authority vested with powers under sub-section (3) of section 65 has no power to increase the valuation and assessment of properties even in cases where applications have been made under section 65(2) and much less in cases where no such applications are made. If the property is under-assessed through fraud, accident or mistake, the only course open would be to amend the assessment list under section 66 (1). They reply to both the questions is in the nagative.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.SG. & P.H.D. No. 828, dated 19th Jan. 52

Office of the R.L.A.

Under section 54 clause (1) of the Bombay District Municipal Act the provision for constructing and maintaining mxk markets is one of the obligatory duties of a Municipality although the Municipality can open or close any public market under sub-section (1) of section 140. In the present case, the Municipality has made no provision for a fruit and vegetable market and is perversely insisting on opening a market on a site which has been pronounced by the Public Health xxthxxx authorities to be insanitary and unsuitable. The Municipality has wasted nearly two years in this controversy to th determent of public interest and from the xxxxx intransigent attitude it has adopted, it appears that it is not k likely to be convinced of the impropriety of its proposal. In the circumstances, it appears that Government can take action under section 173(1).

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 1087, dated the 23rd January 1952.

EVY. 12/7

Office of the R.L.A.

The view taken by the L.S.G. & P.H.D. is correct.

2. So far as the District Local Boards and village panchayats are concerned, there is no difficulty. But with respect to the contributions to be made by municipalities, the Municipal Acts require that the contribution must be made towards an expenditure to be incurred out of the Public fund. The Regional Committees which carry on social education activities are financed by Government and the funds placed at their disposal for expenditure are the funds of Government. Consequently, there would be no legal objection to the municipalities making contributions to the public funds placed at the disposal of these Regional Committees for expenditure over the spread of social education. However, under the proviso (b) to section 52 of the Bombay District Municipal Act and provisio (b) to section 66 of the Bombay Municipal Boroughs Act it is necessary that the expenditure out of the public funds must be calculated to benefit the residents within the limits of the contributing municipality. While making contributions, the municipalities should attach a condition that the amounts so contributed by them should be spent over the social education within the limits of the contributing municipalities.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 2015, dated the 8th February 1952.

EVY. 12/7.

Office of the R.L.A.

Rule 201 of the Parola Municipal Rules provides that after two years' continuous absence, whether with or without leave, an officer or servant is considered to be out of municipal employ. Rule 202 of the said Rules provides that in points not specieally provided for in the above rules the spirit of the provisions of the Civil Service Regulations applicable to Indian Service shall be followed. If Shri Mmatt Wani, Chief Officer of Parola Municipality was deemed to be on deputation in foreign service when he was employed by the District Magistrate and Controller of Prices, East Khandesh, as Taluka Distribution Supervisor, he cannot be considered as being absent from the service of the Municipality with or without leave, within the meaning of Rule 201 of the Parola Municipal Rules; for, he was not granted any leave by the Municipality nor was he refused any leave. He joined his new appointment with the permission of the Municipality and his lien on the post of the Chief Officer was kept by the Municipality. It is true that there is no specific provision in the Rules for allowing any Municipal servant to go on deputation to any foreign service. But rule 202 does provide that in points not specifically provided for in the Rules the spirit of the provision of the Civil Service Regulations applicable to Indian Service shall be followed. This rule, no doubt, is very unhappily worded; for, Statutory Rules to be in force are required to be framed regularly and to provide for only a provision that "the spirit of certain other regulations shall be followed" would not amount to a proper statutory Rule. However, Rule 202 does appear to give ample discretion to the Municipality to follow the Civil Service Regulations in matters not expressly provided for in their

Chapter XXXIX of the Civil Services Rules deals with foreign service. Ordinarily, the contribution for leave, allowance pension etc., of an officer in foreign service is required to be paid by the foreign department (see Regulation 766). But Regulation 772 provides for power of the Local Government to remit contributions for any period for which an officer in foreign is temporarily employed under Government on duties additional to or distinct from his duties in foreign service. It is, therefore, apparent that although the Government did not pay to the Municipality its contribution towards leave, allowance pension etc., of Shri Wani while hw was in the service of Government that in itself would not be a valid ground for holding that Shri Wani cannot be considered to be in foreign service so long as he was employed by Government. The fact that the Municipality did not impose any condition to that effect while agreeing to relieve Shri Wani as requested by the District Magistrate, East Khandesh, would be enough to show that the Municipality may not have considered it reasonable to follow the ordinary principle of requiring such contribution. Besides, as stated above, Regulation 772 does not give some discretion to the employer to remit such contribution. It follows, therefore, that Shri Wani, so long as he was employed by the District Magistrate, East Khandesh for the purposes of Civil Supplies, could be considered to be in foreign service with the permisson of the Municipality. Rule 201 will have, therefore, no application. It is true that Shri Wani was given a notice to revert to the Municipal service in 1946, but as he was not relieved by Government, he could not do so. He cannot, therefore, be held responsible for his failure to revert to the Municipal service. The Municipality was bound to take him back as and when

P.T.O.

Shri Wani was relieved by the District Magistrate,

East Khandesh.

A fee of Rupees 80 as usual may be charged

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 3430, dated the

3rd March 1952.

EVY. 12/7.

Legal Department.

Elections to newly constituted municipalities

Bombay District Municipal Act, 1901

Section 11(1) and Election Rules.

The Bombay District Municipal Election Rules, 1950 are framed by Government under the powers conferred by sub-section (1) of section 11 of the Bombay District Municipal Act and are Statutory Rules. The term "President" used in these Rules is specifically defined in Rule 2(e) and it obviously does not include the "Returning Officer" or any other person appointed by the Collector. The duties of the Returning Officer are also prescribed by the Rules and in the absence of any provision in the Rules permitting a Returning Officer to discharge the duties of the "President" it would not be competent to him to exercise President's powers. The Rules as framed which place the supervision of election with the President and require the counting and scrutiny of votes to be under the supervision of the meeting of the Municipality will not be suitable in the case of a new municipality; and they will have to be modified. It will not be x open to Government to put its own interpretation on the term "President" when no such person is available to meet the difficulty. "It is an essential element of a valid ele-ction that it be held by lawful authority and substantially as prescribed by law" (vide Law of Municipal Corporations in India by P.D. Aiyangar, p. 49). The Rules will, therefore, have to be suitably modified to suit the elections of newly constituted municipalities.

Sd/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 3143, dated the 27th February 1952.

EVV. 13/7.

L.D.R.I. No. 3792, dt. 21-2-52.

Attention is invited to the previous opinion of the R.L.A. No. 20366 dt. 21-12-1951. The question now raised for the consideration of the R.L.A. is as to who should carry on the day to day administration of the Municipality during the interregnum between the declaration of the election of the President and Vice-President, as invalids under sec. 23(14) of the Bombay District Municipal Act, 1901, and the re-election of the new President and Vice-President.

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Office of the R.L.A.

The Director of Local Authorities has raised the question in para. 5 of his endorsement dated 12th September 1951 on the assumption that Shri Dhanji Gordhan Vankar was not validly nominated. As pointed out by the R.L.A. in his last opinion No. 20366, dated 21st December 1951 that assumption being incorrect and the proceedings of the municipality for the election of the President and Vice-President not being vitiated by the defect if any in the nomination of Shri Dhanji, the question raised in para. 5 of the Director's endoresement does not arise.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 4244, dated the 19th March 1952.

EVY. 13/7.

21 & 23.

R.I. No. 872 dt. 4-2-52.

Submitted.

2. It is proposed in these papers to denotify the Shigli Municipality constituted under section 4(1) of the Bombay District Municipal Act, 1901 and to declare that local area a "village" under section 4(1) of the Bombay Village Panchayats Act, 1933. The R.L.A. is requested to advise whether the Municipality cannot be continued till the elections under the Bombay Village Panchayats Act take place.

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Office of the R.L.A.

The point now raised has been concluded by R.L.A's opinion No. 8192, dated the 24th May 1951 and as stated therein unless the municipal area is denotified under section 4(4) of the Bombay District Municipal Act, 1901 no notification under section 4 of the Bombay Village Panchayats Act, can be issued. Unless suitable legislation is undertaken it would not be possible to provide for the administration for the local area during the transition period.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 4736, dated the 28th March 1952.

EVY. 13/7.

Office of the R.L.A.

The view taken by the Collector is not correct. Attention of the Local Self Government and Public Health Department is invited to the R.L.A.'s opinion No. 9482 dated 25th October 1940 where the R.L.A. has opined that the rules framed by a defunct notified area Committee would not be in force. Consequently the building rules framed by the defunct Borivali Notified Area Committee cannot be enforced by the Municipality.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. no. 5312, dated the 9th April 1952.

EVY. 13/7.

Office of the R.L.A.

Rule 3(1) of the Bombay District Municipal Election Rules, 1950, will not in terms apply. There is, however, no objection against fixing a programme for the preparation of the electoral rolls, such preparation being a duty imposed by the statute and being an indispensable step in the constitution of the Municipality. The R.L.A. would, however, advise that separate rules should be made in regard to the time-table for the preparation of the first electrola rolls in the case of areas which for the first time have been constituted or converted into a municipal area.

2. On the second question the view taken by the L.S.G. & P.H.D. is substantially correct. Section 12 of the Bombay District Municipal Act, 1901, lays down the qualifications for being entitled to be enrolled, among which are included the residence and business premises qualifications. Sub-section (2) of that section says that a person shall be deemed to have the requisite residence qualification or the requisite business premises qualification if he has ordinarily resided in a dwelling in the municipal district or occupied business premises in the municipal district , ~~as occupied business premises in the municipal~~ as the case may be, for period of not less than one year immediately preceding the first day of January of the year for which such ~~xxx~~ roll is being prepared. The words "resided in a dwelling in the municipal district or occupied business premises in the municipal district cannot be expanded to mean resided or occupied etc. after such area is declared a municipal district. Under section 4 any local area can be declared to be a municipal district. Therefore, what is required is residence or occupation in the local area which may

have, thereafter, been declared a municipal district. To hold otherwise would make impossible the preparation of the electoral roll until one year expires from the declaration of the area as a municipal district; and we will reach the strange position that during that interventing year no municipal adminstration would be possible. It may be that under sub-section (3) of section 12 the taxation qualification will not be available to person for being put on the first electoral roll There is nothing in section 12 to suggest that the firs electoral roll must contain names of person holding every kind of qualification. Whatever qualification is permissible would alone entitle the person to be put on the first electoral roll.

Sd/-

Remembrancer of Legal Affairs.

U.R. L.S.G. & P.H.D. No. 7289, dated 8th May 1952.

EVY. 13/7.

Office of the R.L.A.

As there was failure to elect the required number of councillors of the Dwarka Municipality the Diector of Local Authorities N.D., in exercise of power under section 10(2) of the Bombay District Municipal Act, 1901, appointed certain person to be councillors to fill up such vacancies. One of the persons ~~emx~~ so appointed for Ward No. IV is Shri Dhanji Gordhan Vankar in a seat reserved for Scheduled Castes. The Director of Local Authorities now states that there is no person named Shri Dhanji Gordhan Vankar. It there is no person of this description, the appointment of such person is nullity and should be ignored for all purposes. No question of applying section 17 of the Bombay District Municipal Act, 1901, would arise or even of cancelling the appointment. The proper coursse would be to appoint another person whose term of office would be co-extensive with that of the outgoing coucillors. Such person should not be appointed vice Dhanji since a person of that description did not exist.

Sd/-

Remembrancer of Legal ~~Rmm~~ Affairs.

U.R. to L.S.G.&P.H.D., No. 8101, dated 15th May 1952.

EVY. 13/7.

Office of the R.L.A.

Bombay District Municipal Act, k 1901.

R.L.A's opinion No. 17911 dated 12-11-51.

The point raised in this case is covered by R.L.A's opinion No. 17911, dated the 12th November 1951 which has been recently affirmed by the RL.A. in his opinion No. 10574 dated them 26th June 1952. It would not be legally feasible for the Abu Municipality to levy house tax unless fresh rules are made in accordance with the provisions of the Bombay District Municipal Act, 1901.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S G. & P.H.D. No. 10976, dated the 2nd July 1952.

EVY. 13/7.

Office of the R.L.A.

The view taken by L.S.G. & P.H.Department is not correct. Proviso to section 23 sub-section (9) of the Bombay District Municipal Act, 1901, provides: Notwithstanding anything contained inx section 26, the Collector or the officer presiding over such meeting may, for reasons which in his opinion are sufficient, refuse to adjourn such meeting. Section 26 sub-section (10) provides "All question shall be decided by a majority of votes". Sub-section (11) provides Any general meeting may, with the consent of a majority of the councillors present, be adjorned from time to time; but no business shall be transacted at any adjourned meeting other than that left undisposed of at the meeting from which the adjournment took place.

2. Rule 16 of the Jaysingpur Municipality provides: Generally every motion shall be oral, but if asked by the presiding authority in any particular case, it should be written in Marathi. Rule 20 provides: On a motion or amendment being second, the presiding authority shall cause it to be read to the meeting and it shall then be considered to be before the meeting for discussion, and any motion or amendment shall not be discussed or noted in the minutes unless and until it is seconded. Rule 24 provides that a proposal to adjourn a meeting or to postpone the consideration of a question shall take precedence of any other motion before the meeting. It is clear from these provisions that any motion of adjournment of meeting requires to be made by a proposal by a member and requires also to be seconded before it could be put to the meeting by the presiding authority. There is no provision requiring the presiding authority to take notice of any request for adjournment of meetin

made in an application by any absent member. Consequently, the Prant Officer who was presiding at t he meeting was not bound to take notice of the application of Mr. Shah for adjourning the meeting. Besides, even if such a motion had been made by Mr. Shah in person or by any other member at the meeting it was open to the Prat Officer to refuse to adjourn the meeting if the reasons for such adjournment were not, in his opinion, sufficient. Mr. Shah's application to the Prant Officer discloses that he wanted the meeting to be adjourned on the ground of the death of his wife. Such ground could hardly be considered sufficient for adjourning the meeting. In the circumstances, there appears no valid ground for holding that the election of the President and Vice-President at the meeting presided over by the Prant Offiver is illegal.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 11212, dated the 7th July 1952.

EVY. 13/7.

Office of the R.L.A.

Bombay District Municipal Act, 1901, sections 52 & 56.

Expenditure over pre-primary school.

Bulsar Municipality.

Under section 52 of the Bombay District Municipal Act, 1901, it would be competent to the Bulsar Municipality to incur expenditure for maintaining and conducting a preprimary school like the "Bal Madir", such expenditure being for the purpose of the Act specified in clauses (c) and (l) of section 56 of the Act.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 8815, dated the 27th May 1952.

EVY. 13/7.

Office of the R.L.A.

The view taken by the Director of Local Authorities, Southern Division, is correct. By G.N., ~~LX~~ L.SG. & P.H.D. No. 6573/33 dated 31st July 1950, the local areas of Rabkavi and Banhatti Municipal districts and the areas of Rampur and Hosur have been constituted into a new permanent municipal district and the old Rabkavi and Banhatti municipal districts have ceased to exist. Consequently, the rules framed by the old Rabkavi and Banhatti Municipalities have ceased to be operative. Under section 46(1) of the Bombay District Municipal Act, the new municipality will have, as soon as conveniently may be after the constitution thereof, to frame rules prescribing, subject to the provisions of Chapter VII, the taxes to be levied in the Municipal district for municipal purposes. Therefore, unless such rules are framed, the new municipality would not be competent to levy taxes, nor would it be legal for the municipality to collect the arrears of taxes due to the old municipa~~lities.~~ lties. Arrears of taxes due to the old municipalities cannot also be recovered under the provisions of section 4(4). The wording of that section may be usefully contrasted with the wording of that section 191, and attention is invited to R.L.A.'s opinion No. 62-Confl. dated the 3rd March 1936, where it was held that merely vesting the property and rights in His Majest for the purposes of expending them will not enable Government to recover the arrears of taxes by resort to the processes open to the municipalities for recovering taxes due to them. The position has become worse since that opinion was give in view of the substitution of

~~section 4 191, lev~~

section 191, leaving at the same time section 4(4) unamended, which would lead to the presumption that arrears of taxes are not included in property and rights.

Sd/-

Remembancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 10047, dated the 16th June 1952.

EVY. 13/7.

L.D.R.I. No. 154-A-L dt. 15-7-52.

It appears that the names of the Councillors of the Navalgund Municipality were published in the B.G.G. Pt. I-A dated 24-4-52, and the first meeting of the new body was called on 15-5-52, for the election of President and Vice President, which was presided over by the Assistant Collr. Dharwar Division. However as only two members attended the meeting, the Assistant Collr. postponed it sine die (vide his letter No. MUN. dated 15-5-52) and requested the Collr. to issue fresh notices. Accordingly fresh notices bearing No. MUN. 2 2022, dated 17-5-52, were issued by the Collr. calling the meeting for the same purpose on 26th May 1952. The Assistant Collector, Dharwar Division was again asked to preside over the meeting and the notices were dispatched on the same day only. The Secretary, Navalgund Municipality to whom the notices were sent for service to the members concerned informed the Asstt. Collr. concerned that the meeting called on 26-5-52 will not be valid for want of seven clear days' notice as required by section 26(3), for the notices were received by him on 20-5-52. The Asstt. Collr. agreeing with the Secretary, requested the Collr. to draw up a fresh programme giving at least 15 days' interval between the date of the notice and the date of the meeting. This request of the Asstt. Collr. was however turned down and he was asked to conduct the meeting on the date fixed i.e. 26-5-52. Accordingly, the meeting on the date was held on that day. It appears that the meeting was attended by all the 15 Councillors. The ex-President Shri Mensinkai raised a point of order inviting the President's attention to the fact that the meeting was invlid as the requisite notice of 7 clear days, as required by sec. 26(3) had not been issued to the

Councillors. The point of order was however rule out. Thereupon 7 out of 15 members left the meeting. The remaining 8 having formed a quorum, the president carried on the proceedings of the meeting, in which Shri Patil and Shri Shidramashetty were duly elected as president and vice president of the Municipality respectively. Against this election the applicant Shri Majjigaud has represented to Govt. His main containtion in this case is that seven clear days notice of the said meeting was not given to the Councillors as required by section 26(3) of the B.D.M. Act, 1901, as such the meeting was invalid and the election of the President and vice President was illegal. The Collr. of Dharwar also has referred the matter to Govt. for decision as required by sec. 23(14) of the Act. The L.S.G. & P.H.D. has therefore requested the R.L.A. to advise in the matter.

The short question raised for R.L.A.'s consideration appears to be whether Shri Patil and Shri Shidramashetty, who are elected as President and Vice President respectively of the Nagalgund Municipality at a meeting held on 26-5-52 were or were not validly elected.

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Please see U.R. to L.S.G. & P.H.D. No. 12041, dated the 22nd July 1952.

EVY. 13/7.

Legal Department.

The view taken by the Director of Local Authorities, Sourthern Division, in his endorsement at page 31 ante is correct.

Sd/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 12041, dated the 22nd July 1952.

EVY. 13/7.

Office of the R.L.A.

On the first point the action proposed by the Director of Local Authorities may be considered appropriate. But on the second point the action proposed by him does not appear to serve any useful purpose. The Municipality has resolved to sanction the leave salary to the two municipal servants who were convicted for taking part in the satyagraha movement. The payment of salary to municipal servants who have been convicted for taking part in the satyagraha movement amounts to encouraging defiance of law and any expenditure of municipal funds for such purpose would obviously be illegal. It may be that these servants are entitled to leave but leave cannot be granted for an illegal purpose. When the Municipality has sanctioned leave salary for the two municipal servants, it is not likely that the Municipality would hold these servants guilty of misconduct even if a departmental inquiry is held by it. Consequently the advice to the Municipality to hold a departmental inquiry for misconduct would not serve any useful purpose. The better course would be to suspend the resolution of the Municipality if the leave salary has not been paid to the two municipal servants and if it is already paid, to take action against such municipal councillors for surcharge as have voted for the resolution on the ground that this amounts to mis-use of the municipal funds.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 726-Confl., dated the 25th July 1952.

EVY. 13/7.

Office of the R.L.A.

Attention of the L.SG. & P.H.D. is invited to the R.L.A's recent opinions No. 10047 dated 16-6-1952 and No. 10283, dated 20-6-1952 where the question is fully considered. The view of the District Local Authority and the under Secretary, L.SGG. & P.H.D. is correct and an amendment of the Bombay Village Panchayats Act and Bombay District Municipal Act for the purpose would be necessary.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 11845, dated the 18th July 1952.

EVY. 13/7.

Office of the R.L.A.

Rule 2 of the Rules of the Sholapur Municipality framed for the levy of water rates and general rates provides that intermittent service for factories or trading purposes shall be double of that for drinking purposes. "Factory" as defined in rule (d) shall have the same meaning as the word "factory" as defined by the Indian Factories Act, XII of 1911. "Factory" as defined in the Factories Act, 1948, means any premises including the precincts thereof:-

(1) Whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon 20 or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,

but does not include a mine subject to the operation of the Indian Mines Act, 1923, or a railway running shed. The expression "trading purposes" has not been defined in the rules. The Sholapur Municipality wants to define it in the following terms: "'Trading purposes' shall include tanneries, aerated factories, ice-factories, ice-fruit factories, dye works, working any engine, machinery or apparatus, or preparation of dal but shall not include hotels, restaurants, etc." This definition is inclusive, and ordinarily there can be no legal objection to it. However, aerate factories, ice factories, ice-fruit factories included in the definition of "trading purposes" may fall under the definition of

"factory". To avoid any kind of inconsistency, the words "not falling under the definition of 'factory' in rule (d)" may be inserted after the words "ice-fruit factories" in the definition of "trading purposes".

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 12891, dated the 4th August 1952.

EVY. 13/7.

Office of the R.L.A.

Under the second proviso to section 165(1) of the Bombay District Municipal Act, 1901, if any such suit is in respect of land leased or sold under sub-section (1) of section 90 or in respect of any immovable property sold or leased for a term exceeding seven years or otherwise transferred, it shall not be lawful for the municipality to compound or compromise in respect of the suit except with the previous sanction of the Commissioner. In the suit failed by Shri Jadilal Bapalal Pandya against the Mohmedbad Municipality, a compromise was effected whereby the plot of land in suits was hold to be of the ownership of Shri Jadilal. It is not clear whether Shri Jadilal claimed ownership of the land by ~~x~~ virtue of any sale by the Municipality. If not, the question of sanction under the second proviso the section 165(1) ~~xxx~~ would not arise. Assuming that the compromise was effected in contravention of the second proviso to section 165(1) ~~xxxx~~ would not be competent for Government to interfere with the decree passed by the Court in terms of the compromise. The aggrieved party should be asked to go to the Court for a declaration that the said compromise decree was null and void for want of sanction under the second proviso to section 165(1).

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. , No. 14042, dated the 28th August 1952.

EVY. 13/7.

Office of the R.L.A.

The G.I.P. Railway has got certain properties at the Talegaon Railway station. This area was previously within the jurisdiction of the Village Panchayat, Talegaon. The Village Panchayat Talegaon has been dissolved and the area has been transformed into a municipal district known as the Talegaon Dabhade Municipality. The railway buildings at Talegaon station were assessed to house-tax and the general sanitary cess in the year 1951, and notices under section 63 of the District Municipal Act were served on the Divisional Engineer, Lonawala. The Divisional Engineer returned the notices with a reply that the railway properties were not liable to pay taxes unless and until the necessary notification was issued by the Government of India under the Railways (Local Authorities' Taxation) Act, 1941. For the reasons stated in the L.S.G. & P.G.D. letter dated the 25th October 1951, Government requested the General Manager, G.I.P. Railway, Bombay to issue the necessary instructions for payment of the house tax and the general sanitary cess to the Talegaon Dabhade Municipality in respect of the railway properties at Talegaon. In his letter dated the 5th June 1951, the General Manager informed Government that the railway is not liable to pay any tax to the Talegaon Dabhade Municipality from the date the railway area was brought in its limits as no notification has been issued by the Central Government declaring the railway's liability for the payment of such tax to the Talegaon Dabhade Municipality; and that the question to levy a house or other tax by the Municipality will have to pend till permissive legislation is enacted in view of articles 285 of the Constitution. R.L.A. is requested to advise whether the stand taken by the General Manager, Central Railway, is correct.

The view taken by the General Manager is correct. Sub-section (1) of section 3 of the Railways (Local Authorities Taxation) Act, 1941, provides that in respect of property

vested in the Central Government, being property of a railway, a railway administration shall be liable to pay any tax in aid of the funds of any local authority, if the Central Government, by a notifiation in the Official Gazette, declares it to be so liable. Unless a notifiation is issued by the Central Government under the said section declaring the G.I.P. Railway property liable to pay the tax to the particular local authority, the railway property would be exempt from such tax. In the Ministry of Railways Notification No. F(X)-II-48/TX/12/1 dated the 3rd July 1948 issued under section 3(1), the Central Government has declared that the administration of the G.I.P. Railway shall be liable to pay in aid of the funds of the local authority set out in columns 1 of the Schedule the tax specified in column 2 thereof. The local authority specified in column 1 is the Talegaon village Panchayat and the tax specified in column 2 is the house tax and general sanitary cess. This notifiation made the railway administration liable to pay the house tax and the general sanitary cess only to the Talegaon Village Panchayat and to no other local authority. Consequently, when the Village Panchayat, Talegaon was dissolved and the Talegaon-Dabhade Municiaplity was constituted for the same area, that notifiation lapsed. The Municipality so constituted is not a body that has succeeded to the rights and liabilities of the Village Panchayat Talegaon. As pointed out in the R.L.A's opinion No. 10283, dated 20th June 1952, it would not be possible for the Municipality to recover the arrears of tax due to the dissolved Village Panchayat Talegaon. Moreover, a fresh notifiation under section 3(1) of the Railway (Local Authorities' Taxation) Act, 1941, would not be feasible on account of article 285 of the Constitution. (See R.L.A's opinion No. 9661, dated 19th June 1951.

Sd/-
Remembrancer of Legal Affairs.

W.R. to L.S.G. & P.H.D. No. 14367, dated the 4th September 1952.

EVY. 13/7.

Office of the R.L.A.

The Palanpur town-walls and gates were not transferred under section 72 of the Palanpur City Municipal Act to the Palanpur Municipality. Consequently, they did not vest in that Municipp-pality. However, after merger of the State the Bombay District Municipal Act, 1901, has been applied to the Palanpur Municipality, with the result that under section 50(2)(a) the town-walls and gates would vest in the municipality unless they are specially reserved by Government. There is nothing to indicate that Government specially reserved the town-walls and consequntly, they have vested in the Municipality. But so far as the town-~~xxx~~ gates are concerned, it appears clear from the Executive Engineer's letter dated the 8th May 1952 (page 13 ante) that they have been maintained by Government since the merger, which is a clear indication of their being specially reserved by Government and, consequently, the town-gates would not vest in the Municipality.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 15490/A, dated the 20th September 1952.

EVY. 13/7.

Office of the R.L.A.

The questionx raised for R.L.A's consideration is whether a candidate who stands for election and is duly nominated in more than one ward, but withdraws his candidature within the time prescribed in sub-rule (2) of rule 14 in all exeepting one, is entitled to have his deposits for the wards for which he has withdraw his candidature, being refunded to him; or whether in such case sub-rule (6) of rule 14 operates debarring refund of deposits excepting in respect of one ward, the rest being forfeited to the Municipality.

2. Sub-rule (2) of Rule 14 of the Bombay District Municiple Election Rules, 1950, provides that if a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made withdraws his candidature in the manner and within the time specified in rule 17 or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made; and, if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or, if not made by the candidate, shall be returned to the person by whom it was made. Sub-rule (3) provides for the return of the deposit to the candidate or to the person who made it, as the case may be, as soon as may be after the declaration of the result that the candidate has been elected. Sub-rule (4) provides that on a candidate failing to be elected, if the number of votes polled by him does not exceed one eighth of the total number of votes polled divided by the number of seats in the ward to fill which votes have been taken, the deposit shall be forfeited to the Municipality. Sub-rule(5) provides that a deposit made in respect of an unsuccessful candidate if not forfeitable under sub-rule (4) shall be returned to the person making it as soon as may be after the publication of the result of the election in the Bombay Government Gazette. Sub-rule (6) provides that if a candidate is duly nominated in more than

one ward not more than one of the deposits made by him or on his behalf shall be refunded, the remainder being forfeited to the Municipality. Considering the juxta tenoram sequentam of these provisions, it would also appear that sub-rule (6) comes into operation only after the elections are held and the results declared. If a candidate withdraws his candidate ure in time respect of any constituency for which he has been nominated, he would be entitled to the return of his deposit under sub-rule (2) even though he has been nominated in another Constituency and contested the elections and sub-rule (c) would not be attracted. The principle underlying the deposit is that it serves as a guarantee that the election machinery is not utilised frivolously or unnecessarily. In cases where the candidate withdraws in time, he thereby demonstrates that he does not wish to tax the election machinery and for that reason the deposit is refunded to him. In the case of a candidate who gets himself nominated in more than one ward and persists in the nomination, sub-rule (6) will apply and even if his case were not covered by sub-rule (4), he will not be entitled to the refund of more than one deposit. That is on the ground that he has used the election machinery in all the wards and is, therefore, not entitled to a refund. If, however, although a candidate is nominated for more than one ward he withdraws in time in respect of all wards except one, he would be entitled to the refund of the deposit m in the wards he has withdrawn his candidature and sub-rule (6) would not be a bar to such refund.

As usual the fee of Rs. 80/- may be charged to the Matheran Municipality.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.SG. & P.H.D. No. 15827/A, dated the 25th September 1952.

EVV. 13/7.

Office of the R.L.A.

This case was discussed with C.M., and it was agreed that apart from the legal position, inasmuch as the Municipality is agreeable, as stated by Deputy Minister (P.W.D.), not to collect octroi if exemption certificate is prodiced, the exemption certificate may be granted at the instance of the Administrative Department concerned. The legal position may be reviewed with a view to regulatisation, if necessary, in case the legality of such exemption certificate is challenged.

Sd/-

Rmembrancer of Legal Affairs.

Secy.L.S.G. & P.H.D.

EVY. 13/7.

Office of the R.L.A.

Bombay District Municipal Act, 1901.

Section 179(1).

It would be feasible for Government to revise the order of supercession passed under section 179(1) of the Bombay District Municipal Act, 1901 and to curtail the period of supercession as proposed. (cf. Advocate General's Opinion No. 9 dated the 15th March 1923 and R.L.A's opinion Nos. 1474 dated the 13th March 1931 and 1673 dated the 14th March 1936). As stated in the opinion of the Advocate General, on the expiration of the period specified in the amending Order, the municipality must be re-established under sub-section (4) of section 179 of the Act.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 17943/A, dated the 29th October 1952.

EVI. 13/7.

Office of then R.L.A.

It appears that a general meeting of the Dhari Municipality was called for the election of the President and Vice President before the name of the nominated lady councillor was published under section 20 of the Bombay District Municipal Act, 1901, and consequently Government by its order No. S-90(246) dated 28th November 1951 held that the meeting was not validly called and declared that the elections of the President and Vice President held on the 1st March 1951 were void. The following three questions are raised for the R.L.A's consideration:

(1) Who can carry on the administration of the Municipality for the period between the declaration of the election of the President and Vice President null and void and their fresh election?

(2) To whom the President whose election has been declared void can give notice of resignation of office as councillor?

(3) Whether the President can be granted leave after his election is declared void and, if so, what authority can sanction it?

2. Section 23(7A) of the Bombay District Municipal Act, 1901, provides that on the expiry of the term of office of the Municipality, the President and Vice President shall continue to carry on the current administrative duties of their offices until such time as the new President and Vice President shall have been appointed or elected and shall have taken over charge of their duties. In the present case the new President and Vice President were no doubt elected on 1st March 1951 but their election was held to be void on 28th November 1951 on the ground that the meeting at which they were elected was not validly constituted. It is, therefore, apparent that the election of the President and Vice

President at the meeting on 1st March 1951 was clearly invalid. Sub-section (7A) of section 23 requires the retiring President and Vice President and to continue in office until a new President and Vice President have been appointed or elected. The expression "appointed or elected" means validly appointed or elected. Since the new President and Vice President were not validly appointed or elected, the retiring President and Vice President would continue in office until a new President and Vice President are elected at a validly constituted meeting. In the circumstances, the retiring President and Vice President would be entitled to continue in the Office.

3. Section 17(2) of the Bombay District Municipal Act, 1901, provides that the term of office of such councillors shall be deemed to commence on the date of the first general meeting which shall be held after such election and after the expirty of the term of the outgoing councillors at which a quorum shall be present. Section 15A provides that any councillor may resign his office by giving notice in writing to that effect to the President. Reading these provisions together the R.L.A. in his opinion No. 489 dated 20-1-1941, held that a Councillor would not be entitled to resign his office before he has assumed it and if he resigns it, it would not be considered as valid within the strict meaning of section 15A. Councillorship of a municipality is a privilege which it is open to a councillor to resign at any moment he likes. Under section 18(1) of the Act in the event of the death, resignnation, disqualification, disability or removal of a councillor previous to the expiry of his term of office the vacancy shall be filled up. This provision contemplates a casual vacancy arising by death, resignation, disqualification etc., even before the term of office of a councillor has begun. This would mean that a councillor may resign his office even before he has accepted office, that is to say, even before the term of his office has actually commenced, and such vacancy is treated as a casual vacancy. If a councillor is to be held not entitled to resign his office before his term of office has commenced it would lead to a strange result in the case of vacancies arising by death, disqualification of disability of a councillor before he

has assumed office; for, in such case no casual vacancy can be deemed to have occured. It appears, therefore, that section 17(2) of the Bombay District Municipal Act, merely prescribes the period of office of councillors for the purpose of determining when their office shall be deemed to be vacant. Besides a casual vacancy would not affect the validity of proceedings. (See sub-section (3) of section 38 of the Bombay District Municipal Act). In these circumstances, it appears that there would be no legal objection to a councillor resigning his office even before his term of office has commenced R.L.A.'s opinion No. 489, dated the 20th January 1951 seems to be of doubtful validity

4. Under section 15A of the Act a Councillor can resign his office by giving notice in writing to that effect to the President. In the present case, the retiring president is considered to be still in office. There would, therefore, be no legal objection to the president, whose election has been declared void, giving notice of resignation of his office as councillor to the retiring president.

5. The third question does not arise as the election of the President has been declared void by Government.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 18314/A, dated the 4th November 1952.

EVY. 13/7.

Office of the R.L.A.

If an ad hoc committee is appointed to manage a dispensary of a municipality such committee would not be a committee appointed under section 29 of the Bombay District Municipal Act, 1901 and the provisions of that Act would not apply to the Committee. In the present case, it appears that the dispensary is maintained by the Gokak Municipality and the District Local Board, Belgaum, contributes sum of Rs. 1000/- for its maintenance. Under rule 22(3) of the Government Aided Charitable Dispensaries Rules, every municipal dispensary which receives from a district local board a minimum annual contribution of Rs. 1000/- shall include among the members of the dispensary committee one representative of such district local board for every one thousand rupees contributed by the said board subject to a maximum of two representatives. It is, therefore, clear that under this rule which is non-statutory, the District Local Board, Belgaum, can claim a representation of one member on the Dispensary Committee of the Gokak Municipality. Under section 31 of the Bombay District Municipal Act, 1901, person other than councillors can be allowed to serve on the committees provided they are in the opinion of the Municipality possessing special qualifications for serving on such committees. "Qualification" means that which makes man fit to hold an office. The circumstance or group of circumstances whereby an individual is rendered eligible for a post m is called his qualification. Any incident annexed to a right that is an inherent reciprocal obligation is also called a qualification of the right. (See Iyer's Law Lexicon, pp. 1057-58). A representative appointed by the District Local Board Belgaum, by virtue of rule 22(3) of the Government-Aided Charitable Dispensaries Rules could be deemed

to possess the special qualification for being on the committee because of the right ~~x~~ acquired by virtue of the contribution of Rs. 1000/- made towards the maintenance of the dispensary. It appears, therefore, that there would be no legal objection to allowing a representative of the District Local Board, Belgaum, to be on the Dispensary Committee of the Gokak Municipality provided the municipality passes a resolution that in view of the contribution made by the District Local Board, Belgaum a representative appointed by the District Local Board, Belgaum, would be deemed to possess the special qualification to serve on the Committee. The point is, however, doubtful, and it would be advisable to amend section 29 of the Bombay District Municipal Act, specifically to accommodate such representatives on the committees appointed by a municipality.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 18313/A, dated November 4th 1952.

EVY. 14/7.

Office of the R.L.A.

Bombay District Municipal Act, 1901.

Section 15-A.

Section 15A of the Bombay District Municipal Act, 1901, provides that any councillor may resign his office by giving notice in writing to that effect to the President and the President may resign his office by giving notice in writing to that effect to the Commissioner. It is apparent that this provision does not provide for the authority to whom the notice of resignation of his office by the Vice President can be given. Section 20 of the Bombay Municipal Boroughs Act clearly provides for this. Consequently, section 15A of the Bombay District Municipal Act requires to be amended on the lines of section 20 of the Bombay Municipal Boroughs Act, prescribing an authority to whom notice of resignation of his office by the Vice President can be given. The office of President and that of Vice President being different, the Vice President cannot give a notice of resignation of his office as a President of councillor could do under section 15A. Pending the amendment of section 16A as suggested above, it appears that the Vice President can give a notice of resignation of his office to the Municipality even though it is not so expressly stated in section 16A; for he cannot be denied the right to resign his office and the ultimate authority for the purposes of administration of a municipality being vested in the municipality itself the notice of such resignation can be addressed to the municipality.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 4740, dated the 28th March 1952.

EVY. 14/7.

Office of the R.L.A.

The Sinnar Municipality was superseded on 16-8-1952 for a period of 2 years. Government has now ordered that the period of supersession of that Municipality should be reduced to six months i.e. upto 15-2-1953, and it is proposed to re-establish the municipality. The question now raised for R.L.A's consideration is whether the Municipality can be re-established by appointing the old councillors.

2. Section 179(5) of the Bombay District Municipal Act, 1901, provides that the Municipality shall be re-established by the election or appointment of new councillors under the provisions of this Act applicable thereto, (a) if no direction has been made under sub-section (4), then on the expiration of the period specified in the order of supersession under sub-section (1); and (b) if a direction has been made under sub-section (4), then on such date as is fixed under that section for the re-establishment of the Municipality. It is clear from this provision that the Municipality has to be re-established by the election or appointment of new councillors. A municipality can be established by election under section 10, or partly by election and partly by nomination under section 14(1)(b) in exceptional cases and under section 14(2) by nominating all councillors, in cases of periodical municipalities. Consequently, the appointment contemplated under section 179(5) is the appointment of councillors under section 14(1)(b) or section 14(2). The Sinnar Municipality is not

a municipality of the kind falling under section 14(1)(b) or section 14(2). Consequently, if the Sinnar Municipality is to be re-constituted, it xhxx shall have to be x reconstituted by the election of new councillors.

Sd/-

Remembrancer of Legal Affairs.

Dy. M(L.S.G.)

EVY. 14/7.

Office of the R.L.A.

The decrees obtained by the old Municipality can be treated as property within the meaning of section 4(4) of the Bombay District Municipal Act, 1901 and they now vest in Government. These decrees can be assigned to the new municipality of executed by Government. Mere empowerment by an executive order of the Administrator of the Municipality to proceed to execute the decrees would not amount to assignment of the decrees.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 20896/A, dated the 12th December 1952.

EVY. 1%/7.

Office of the R.L.A.

Section 51 of the Cambay Land Revenue Code, 1942 provided that whenever any public road, land or path which is the property of the Cambay Darbar or part thereof is not required for use of the Public the Cambay Darbar may by notification in the Official Gazette make a declaration to such effect and on such declaration the rights of the publicxx as well as individuals in or over any such reoad, lane or path or part thereof shall be extinguished. The land in the present case was a public street land vested in the Cambay Darbar and admittedly no notification under this section was at any time issued That would not however affect the right of the Cambay Darbar to the sale of any street land under the oridnary powers vested in it. The procedure to be followed xx xxx and principles to be observed in the grant of land in the Cambay Town have been laid down in the Cambay Darbar's Huzur Orders No. M/60/438 dated the 2nd March 1944 and No. R-5680 dated the 11th April 1944 which had the force of law. These orders provided for the sale of street land under the orders of the Dewan of the State and presumably the Minister of Health who directed the grant of the land in the present case had the power to do so. Besides, it has been definitely stated that grant of the land in this case was in accordance with the established practice of the State. The Cambay Darbar did not treat such land as being subject to section 51 of the Cambay "and Revenue Code, 1942. In x the Circumstances, it does not appear proper to revise the order of the grant of the land. In this view it is not necessary to consider the effect of the High Court judgment in S. Appeal No. 59 of 1940 in G.R.R.D. No. 8200/- 39, dated the 15th July 1948, on this case. The

view taken by the Collector of Kaira in his letter dated the 15th December 1950 appears to be correct.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.Department No. 21987/A, dated the 27th December 1952.

EVY. 14/7.

Office of the R.L.A.

Right from the commencement of the Government of India Act, 1935, it has been the consistent view both of the Government of India and this Government that any entry in any of the Lists does not by itself confer power upon the Legislature to bring in taxation measure. The entry in the Lists must specifically confer power to tax. Entry 11 in List II cannot therefore be construed as empowering the State Legislature to levy an education tax. Power to levy education tax or what is otherwise known as "education cess", can however be derived from enty 61 in List II, namely, Capitation taxes. A Capitation tax is a poll tax. Lutz in his 'Public Finance" states that poll tax is levied in 13 States in America. According to him it may be levied for State or for local use or both. When imposed for such use the receipts are devoted to school purpose in nearly all States; when levied for local purposes it is most frequently devoted to schools or to the maintenance of roads and streets although in some States it may be used for general purposes (p. 465 of Public Finance). The levy of education cess of tax will (therefore) be in substance a capitation tax and can be validly levied by the municipality under clause (xi) of sub-section (1) of section 59 of the Bombay District Municipal Act, that tax being a tax which the State Legislature has power to impose in the State.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 16372/A, dated the 6th October 1952.

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